

MEETING MINUTES, BOARD OF ZONING APPEALS, DECEMBER 11, 2006

Present: Phil Tinkle, Mike Campbell, Shan Rutherford, Raynel Berry, William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

PREVIOUS MINUTES

October 23rd – approval of these minutes will take place at next meeting due to a problem with the copies of the minutes that were mailed out to the members for their review. New copies will be sent out with the next mailing for approval at the next meeting.

Campbell moved to adopt the meeting schedule for the BZA for 2007, as presented, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

OLD BUSINESS

Docket V2006-013 – Use Variance – 516 N. Madison Ave. – request to allow addition of attached garage for business use and to allow improvement of area above garage to be used as living space – 0.869 acres zoned B-1 Business – Persinger Roofing, applicant; Brian Persinger, owner; Van Valer Law Firm, representing – continued from October 9th hearing due to unofficial vote.

Ton Vander Luitgaren, Attorney, Brian Persinger, petitioner, and remonstrators in the audience were sworn.

The public hearing was not re-opened. Chairman Tinkle opened discussion for questions from Board members. Tinkle inquired about the vacant lot to the north of this property, between the remonstrators properties and the petitioner's property.

The statutory criteria was addressed by the petitioner's attorney as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The property has existed as a contracting business on the ground floor and a single family apartment on the second floor since before the adoption of the Zoning Ordinance. The use for which this variance is being requested is the same as the current use occurring on the subject property and there has never been a complaint that this use injures the public health, safety, morals and general welfare. To the contrary, since the owner plans to improve the exterior of the building to make its appearance more presentable to the community, the approving this variance request will improve the public health, safety, morals and general welfare of the community.
2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The existing facilities have been used in the exact same manner since before the adoption of the Zoning Ordinance. There has never been any complaint that the current use of the real estate has, nor would the continuance of such a use, affect the adjacent area in a substantially adverse manner. In fact, it is consistent with the adjacent uses up and down Madison Avenue which include B-1 and C-1 zoning classifications. Furthermore, there is substantial buffering in the form of mature trees between the subject property and the neighborhood behind the B-1 and C-1 zoning classifications up and down Madison Avenue. The buffering obstructs the view and minimizes any noise associated with the coming and going of vehicles.
3. **Criteria:** The need for the Variance arises from some condition peculiar to the property involved. **Answer:** The condition creating the difficulty is, in this situation, the long term existence of the structures and facilities that are, and have been, used for a contracting business and single apartment. The current use of the property is compatible with the surrounding uses up and down Madison Avenue, and a change in its use is prevented by the high cost associated with demolition and restoration.

4. **Criteria:** The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought. **Answer:** The long term existence of the structures within the facilities and the current use creates a situation in which the use pursuant to the existing zoning classification is just not feasible due to the high cost associated with demolition and restoration. A previous owner transformed the property into a contracting business and apartment residence a long time ago.
5. **Criteria:** The approval does not interfere substantially with the Comprehensive Plan. **Answer:** Approving this variance request will substantially advance the Comprehensive Plan's stated goals and objectives. First, the Plan at page 4 shows what the citizens of Greenwood believe to be important factors for the City to consider inland use planning in pertinent part as follows: A general attitude survey was developed jointly by City officials and the Consultant. The survey sought to determine attitudes regarding a wide variety of topical issues including Economic Development. The responses to the survey were process and presented in detail to the Plan Commission. Issues which were ranked "very important" by more than 40% of respondents included retaining existing employers. Thus, Greenwood's citizens believe retaining existing employers and advancing Greenwood's economic development is of major importance. The Plan itself states on page 7 in pertinent part as follows: Civic Business District Goals and Objectives: The goal for the "central Civic business district" is to preserve it as the focal point of the community. Within this area are government offices (excluding governmental support facilities), park and recreational facilities, schools and churches, library and bank, business, and residences. The topical objectives all focus on the preservation and stabilization of this important part of the community. The Plan states at page 8 with respect to development policies in pertinent part as follows: Development Policies: Commercial Development: Restrict future commercial development to major corridors and deny encroachment into established residential areas. Create a new zoning district to combine B-1 and certain C-1 uses for portions of Madison Avenue and Main Street. The Plan states at page 18 with respect to commercial uses in pertinent part as follows: Commercial Lane Use: Commercial land use is shown by the Comprehensive Land Use Plan to be confined to: the U.S. 31 corridor; the SR 135 corridor; the Madison Avenue corridor; the Main St. corridor; and the I-65 corridor. The confinement of commercialism to these established areas provides focus and eliminates further sprawl and "leapfrog" development. The intersection of the Main St. and Madison Avenue corridors is the focal point of the civic business district. The retention of business, institutional, financial, recreational and governmental office activities within this area is essential to maintaining a civic focal point of identification for the community, not withstanding the need for governmental support facilities elsewhere in the community. Table 1 of the Plan's "Goals and Objectives" states in pertinent part as follows: Create reinvestment opportunities in existing neighborhoods and commercial areas. Reinforce existing investments in existing neighborhoods and commercial areas. Table 1 also states in pertinent part as follows: Retain existing business and industries.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow addition of attached garage for business use and to allow improvement of area above garage to be used as living space, in that the approval:

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report; and

- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.
- D. The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought, per the reasons cited in the Staff Report;
- E. The approval does not interfere substantially with the Comprehensive Plan, per the reasons cited in the Staff Report.

With the following conditions:

- 1) Outdoor storage shall be prohibited.
- 2) A plot plan shall be submitted for approval by the Director prior to the issuance of an Improvement Location Permit for the proposed addition which indicates the installation of appropriate landscaped buffer yards and paving in accordance with the requirements of the Zoning Ordinance.
- 3) Highest opaque wooden privacy fence that is permissible by ordinance, but no higher than 10', shall be installed along the north and west boundaries, extending the full length of the property line. It shall be in place at the time the Certificate of Occupancy for the building is issued.
- 4) Deliveries of materials will be limited to between the hours of 7 a.m. and 7 p.m.

seconded by Rutherford. Vote for **approval** was unanimous, 3-0. Motion carried.

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2006-013, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

NEW BUSINESS

Docket V2006-014 – Dimensional Variance – 1354 Fry Road, request to allow a stone driveway rather than paved surface for a portion of the driveway – Larry Carroll, petitioner; Northpointe Surveying, representing.

Donna Smithers, Northpointe Surveying; and Larry Carroll, petitioner; came forward and were sworn.

Waivers were need for newspaper notifications. In both the Southside Challenger and the Daily Journal, notice was only published for 12 days, rather than the required 15 days. Rutherford moved to grant the waiver, seconded by Campbell. Vote for approval was unanimous, 3-0. Motion carried.

Houses will set back several feet from Fry Rd. The variance request is to allow a portion of the driveway to remain gravel.

The statutory criteria was addressed by the petitioner as follows:

- 1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The proposed drive will serve the lots to the rear of the property. In addition, a large portion of the drive will be hard surface. The proposed stone drive will be compacted and placed in a manner to assure a solid base for all traffic to the proposed lots. The construction of the proposed drive is not injurious to the public health and safety. The drive will be constructed in good taste so that it will not be injurious to the morals and general welfare of the community.
- 2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The asphalt surface in the r-o-way and the stone material to be placed as the drive goes back will be in good taste. There will be no additional street cuts onto Fry Rd. to access these lots.

3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The lots proposed for this site average 1.5 acres. The proposed drive to be constructed will have an average length of up to 300 feet. The average drive length is approx. 60 feet. Due to the length of the proposed drive the cost of the paved surface will result in a practical difficulty for Mr. Carroll.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow stone rather than paved surface for a portion of the driveway, in that the approval:

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property, per the reasons cited by the Staff Report.

With the following conditions:

- 1) A 24-foot wide driveway shall be paved from the Fry Rd. right-of-way north to the rear lot line of Lot 3.

seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2006-014, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Docket V2006-015 – Dimensional Variance – Wheatfield Subdivision – request to reduce the minimum density requirements and also to reduce the minimum front yard setbacks as set forth in the ordinance – Triple S Acquisition, LLC, applicant & owner.

Joe Van Valer, Attorney and Jeff Smith, Applicant came forward and were sworn. When this went to PC one of the commitments was that -- Future subdivision plans and site plans shall substantially comply with the plan presented. Asking to reduce the density – property in overlay zone. Also, setback requirement from Graham Rd. by ord. is 90'. Asking for variance to allow setback of 45' for residential properties from Graham Rd.

The statutory criteria was addressed by the petitioner as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The approval of the request to reduce the minimum density requirement will not affect the public health, safety, morals and general welfare of the community because the reduction in density will not create an unsafe or more intense use of the RE, nor will the design standards be negatively affected. There will be no negative effect as the petitioner's request is for a reduction in density, to allow for a total of sixty (60) units within the portion of the RE that lies within the Overlay Zone. Under the

Overlay requirement, the density requirement is no less than ten (10) units per acre. The RE acreage within the Overlay Zone is 7.41. So, petitioner is effectively requesting a reduction of fourteen (14) total units, or approximately 2.3 blocks. There is no indication that approval of this petition, reducing the density requirements, will negatively impact the general welfare of the community. The approval of the request to reduce the minimum front yard setback along the corridor street will also not affect the public health, safety, morals and general welfare of the community because the reduction will be applicable to only three (3) residential lots. There are only three (3) lots which abut Graham Road, which is affected by the Ordinance requirements. One (1) lot on the south side of the commercial development and two (2) lots to the north side of the commercial development. The requested setback variance would reduce the setback from ninety (90') feet, conforming to the Overlay requirements. Therefore, a very small portion of the road frontage is affected by said request. There is no indication that the approval of said petition, and resulting in a variance standard for three (3) lots which would negatively impact the general welfare of the community. The approval of this petition will allow petitioner to develop the RE in an aesthetically consistent manner, while complying with the zoning commitments established for the property.

2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The use of the adjacent properties would not be substantially affected because approval of this petition will not change the intended development for the area. The balance of the RE is appropriately zoned and will be developed in a substantially similar manner as RE which is affected by the Overlay Zone requirements. The residential/commercial development is appropriate for the area, and only a small portion lies within the Overlay Zone. The requested variances attempt to maintain the character of the development of the RE. In order to conform with the zoning commitments, the RE must be developed in substantial compliance with the concept plan.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Strict application would cause economic hardship and practical difficulties for the property owner. As a practical matter, the proposed variance request affects only a small portion of a larger development, as only a portion of the RE lies within the overlay zone. In this particular project, the petitioner received rezoning approval for the development of the RE, which included a commitment that the development would substantially conform to the concept plan submitted at that time. In order to comply with said commitment, an approval of this request is required. The zoning ordinance states the purpose of the overlay zone requirements is "pertinent to appearance is the design of the site, building and structure, plantings, signs, street hardware, and other miscellaneous objects that are observed by the public ... standards are not intended to restrict imagination, innovation, or variety, but rather to assist in focusing on design principles, which can result in creative solutions that will develop a satisfactory visual appearance within the overlay zone, preserve property values, and promote the public health, safety and welfare by providing for consistent, and coordinated treatment of the properties. The proposed development of the RE conforms to the stated purposes. The requested variances do not affect design principles, nor do said variance requests diminish the quality or standards of said development. The requested variances will act to maintain the development RE in a responsible and possible manner, in accordance with the zoning ordinance. As previously mentioned, the proposed variance requests involve an area which includes only a portion of the total project. The balance of the entire project will comply with the ordinance. Since the entire project will adequately address the concerns of the zoning ordinance, the intent of the provisions of the ordinances are fulfilled.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved to amend the staff report to strike the reference made to 7.75 units per acre and replace it with "to reduce the minimum density requirements to less than 10 units per acre", seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to reduce the minimum density requirements to less than 10 units per acre, in that the approval:

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report; and
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

Seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to provide for a front yard less than 90 feet in depth, in that the approval:

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report; and
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

With the following conditions:

- 1) The commercial out lots along Graham Road shall require the maintenance of a 90-foot front yard setback.
- 2) A 70-foot half right-of-way shall be dedicated along Graham Road upon recording of secondary plat.

seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2006-015, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

ANNOUNCEMENTS/REPORTS

Rutherford moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.** Meeting was adjourned 7:05 p.m.

JANICE NIX
Recording Secretary

PHIL TINKLE
Chairman